



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

August 2, 2016

The Honorable Dennis A. Ross
United States House of Representatives
Washington, DC 20515

Dear Representative Ross:

Thank you for your letter to Secretary John B. King, Jr., dated July 6, 2016, requesting that the U.S. Department of Education's Office for Civil Rights (OCR) remove from its website a list of institutions currently holding a religious exemption to Title IX of the Education Amendments of 1972 (Title IX). I am pleased to respond on behalf of the Secretary.

As you may know, OCR's current process by which an educational institution requests and is granted an exemption under Title IX is dictated by the Department's Title IX regulations. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. The statute (at 20 U.S.C. § 1681(a)(3)) and its implementing regulations (at 34 C.F.R. § 106.12(a)) provide that Title IX does not apply to an educational institution controlled by a religious organization to the extent that application of Title IX would be inconsistent with the controlling organization's religious tenets. 34 C.F.R. § 106.12(b) provides that an educational institution that wishes to claim the exemption may do so by submitting in writing a statement from the highest ranking official of the institution, identifying the provisions of the Title IX regulations that conflict with a specific tenet of the religious organization that controls the educational institution.

In late April 2016, OCR published on its website an explanation of the religious exemption provision of Title IX, a list of all the institutions that currently hold a religious exemption or have a request for one pending, and a searchable database of all of the letters from institutions requesting a religious exemption and OCR's response letters.¹ Between October of 2014 and April of 2016, OCR received 41 requests for all or some subset of the religious exemption request and response letters under the Freedom of Information Act (FOIA). Although there are exemptions within FOIA that allow or require an agency to withhold certain information from otherwise releasable documents, OCR determined that these documents do not contain information that falls within these exemptions. Thus, the letters were publicly released in their entirety and without redaction in response to the FOIA requests. The combination of the following factors led OCR to determine that it would be appropriate to post the documents on OCR's existing webpage regarding Title IX religious exemptions: the volume of requests for the religious exemption documents during a comparatively short period of time; the expectation that additional religious exemption requests will be made, leading to additional FOIA requests; and the large number of responsive documents.

¹ The webpage is available on OCR's website at <http://www2.ed.gov/ocr/frontpage/pro-students/rel-exempt-pr.html>.

OCR's website will continue, as it does today, to include an explanation of the religious exemption and its basis in both law and regulation; will continue to make clear that Title IX does not apply to an educational institution that is controlled by a religious organization to the extent that application of Title IX would be inconsistent with the religious tenets of the organization; and will continue to include information on how an educational institution can claim the religious exemption. Nothing on the website suggests that an institution's assertion of a religious exemption signifies that the institution has engaged in unlawful discrimination.

OCR recently met with representatives from religious postsecondary institutions and organizations whose membership is comprised of religious schools to receive feedback on the religious exemption webpage. We are planning modifications to the webpage to address their comments. In particular, OCR intends to accommodate requests by schools seeking to link an institution's current exemption status with historical requests made under a previous school name and supplement the searchable database with relevant historical records, as appropriate.

I hope you find this information helpful. If you have any additional questions, please do not hesitate to contact Lloyd Horwich, Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Lhamon', with a stylized flourish at the end.

Catherine E. Lhamon
Assistant Secretary for Civil Rights